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Eric M. McGregor

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HOORAY BEER!?: HOW THE REEMERGENCE OF ALCOHOL SALES AT CAMPUS STADIUMS WILL AFFECT UNIVERSITIES

ERIC M. MCGREGOR*

I. INTRODUCTION

On September 27, 2009, the National Football League's (NFL) Cincinnati Bengals squared off against their hated division rivals, the Pittsburgh Steelers.¹ The Bengals ended up winning the game, coming from behind in thrilling fashion to beat the Steelers 23–20.² However, when all the cheering and excitement ended, one Bengals fan left the stadium disappointed and hurt. During the game, two fans, who each consumed several alcoholic drinks throughout the game, lost their balance and fell on top of another fan sitting in front of them.³ Bengals fan Rebecca Dunn suffered a broken and bloody nose, a broken finger, and a laundry list of other minor injuries.⁴ Dunn's list of injuries reads like that of an NFL starting running back, but Dunn is a normal fan who had to go to court to tackle one of the growing problems in professional and college stadiums across the country: injuries caused by intoxicated fans.

Alcohol and sporting events go hand-in-hand.⁵ Drinking alcohol has always been a part of sports, whether it is while fans watch a game at a sports bar, tailgate before the game, or consume a few beers once inside the stadium.⁶ College sporting events are no exception to this popular pastime.

* Eric M. McGregor is a third-year law student at Marquette University Law School. Upon graduation in May 2013, he will earn a Certificate in Sports Law from the National Sports Law Institute. Eric graduated from the University of Wisconsin-Madison in 2009, where he earned his B.A. in Economics and Political Science. Currently, Eric serves as the Comment Editor of the *Marquette Sports Law Review*.

1. Associated Press, *Woman Sues Bengals, Beer Vendor*, ESPN (Dec. 29, 2010), <http://sports.espn.go.com/nfl/news/story?id=5963913>.

2. *Id.*

3. *Id.*

4. *Id.*

5. Steve Wieberg, *Colleges are Reaching Their Limit on Alcohol*, USA TODAY, Nov. 17, 2005, at 1A.

6. *Id.*

However, alcohol is not freely available inside every college sporting venue. As of the 2011 college football season, only 20 of the 120 Football Bowl Subdivision (FBS) schools made alcohol available for purchase to all fans in the general seating areas.⁷ The oft-stated reason for limiting the availability of alcohol in college stadiums is the concern about underage drinking and binge drinking among both students and other fans.⁸

In a tough economy, however, the growing concern over university budgets caused some schools to change their tune on selling alcohol at their stadiums.⁹ Several schools, including the University of Louisiana at Lafayette, the University of Akron, the University of Maryland, and the University of Memphis, recently began offering beer for sale either in suites or in general seating areas for the first time at their stadiums.¹⁰ The amount of money that hangs in the balance regarding the decision to sell alcohol at a school's stadium is no trivial amount. When the University of Minnesota-Twin Cities (University of Minnesota) decided initially that it would not sell beer at its new on-campus football stadium, TCF Bank Stadium, the university's athletic department estimated that it would be giving up about \$1 million in potential revenue per year.¹¹ Holding the opposing view is the City of Memphis, which estimates that it will make an additional \$200,000 in revenue per year by selling beer at Liberty Bowl Memorial Stadium—home of the University of Memphis Tigers football team.¹²

The prospects of additional revenue may sound great to any collegiate athletic department, but if it chooses to sell alcohol at its stadium, it may face potential legal liability as well. This Comment will discuss what considerations factor into a university's decision to sell alcohol at a stadium

7. Randy Peterson, *Beer a Growing Part of College Football Revenue Streams*, USA TODAY (Aug. 7, 2011), http://www.usatoday.com/sports/college/football/2011-08-07-beer-sales-rising-at-college-stadiums_n.htm. The twenty schools include Bowling Green State University, University of Cincinnati, Colorado State University, University of Connecticut, University of Hawaii, Houston University, Kent State University, University of Louisiana at Lafayette, University of Louisville, University of Miami, University of Memphis, University of Nevada-Reno, University of Nevada-Las Vegas, Rice University, San Diego State University, University of South Florida, Syracuse University, Temple University, Tulane University, and West Virginia University. David Briggs, *A Revenue Stream Worth Tapping?: Colleges Wrestle with the Complicated Question of Alcohol and Athletics*, COLUM. DAILY TRIB. (Mo.), Nov. 17, 2011, at B1.

8. Wieberg, *supra* note 5.

9. Jeff D. Opdyke & David Kesmodel, *Beer Sales Make a Comeback at College Stadiums*, WALL ST. J., Sept. 12, 2009, at A5.

10. *Id.* The University of Memphis plays at Liberty Bowl Memorial Stadium, which is owned by the City of Memphis. The City of Memphis made the decision to sell alcohol at Liberty Bowl Memorial Stadium. *Id.*

11. *Id.*

12. *Id.*

and, if a university decides to do so, what tort liability it may face if an intoxicated fan injures another fan at one of the university's athletic events.

Part II looks at cases that arose from intoxicated fan behavior against a university and against a professional team. Part III discusses the dram shop statutes¹³ of three states—Wisconsin, Minnesota, and West Virginia—which provide varying types of protection to sellers of alcohol and serve as the primary case studies for this Comment. Part IV addresses the role of the National Collegiate Athletic Association (NCAA) and its part in a university's decision to sell alcohol at its stadiums.

Part V then discusses the differing policies of three universities—the University of Wisconsin-Madison (University of Wisconsin), the University of Minnesota, and West Virginia University—and how various rules and policies influence a university's decision to sell alcohol in its respective stadium. Part VI explains the legal implications faced by the University of Minnesota and West Virginia University, both of which currently sell alcohol in general seating areas, and the possible legal implications faced by the University of Wisconsin should it decide to sell alcohol at its stadium. Part VII discusses potential issues facing the NCAA, state legislatures, and universities in dealing with the prospects of increased alcohol sales at college stadiums. Finally, Part VIII will conclude that, although dram shop statutes and NCAA rules offer some resistance to a university's decision to sell alcohol, a university's decision to sell alcohol ultimately rests on the competing interests between the prospects of additional revenues and university policies discouraging the use of alcohol.

II. CASES OF ALCOHOL-RELATED TORTS IN COLLEGIATE AND PROFESSIONAL SPORTS

Two examples of alcohol-related tort cases arising from injuries at sporting events are *Bearman v. University of Notre Dame*¹⁴ and *Verni ex rel. Burstein v. Harry M. Stevens, Inc.*¹⁵ The *Bearman* case involved injuries caused by an intoxicated fan at a college stadium,¹⁶ while the *Verni* case involved injuries caused by an intoxicated fan at a professional stadium.¹⁷ Also, these cases are among the rare ones that did not settle before reaching

13. Dram shop statutes allow injured plaintiffs to recover damages from a seller or vendor of alcohol for injuries caused by a customer's intoxicated behavior. BLACK'S LAW DICTIONARY 567 (9th ed. 2009).

14. 453 N.E.2d 1196 (Ind. Ct. App. 1983).

15. 903 A.2d 475 (N.J. Super. Ct. App. Div. 2006).

16. *Bearman*, 453 N.E.2d at 1197.

17. *Verni*, 903 A.2d at 483–84.

the courts.

In *Bearman*, a female fan suffered a broken leg after being knocked down by an intoxicated fan at the conclusion of a University of Notre Dame football game.¹⁸ The injury occurred as the Bearmans walked to their car in the parking lot and an intoxicated man fell into the back of Mrs. Bearman's leg, knocking her to the ground.¹⁹ Bearman and her husband sued the University of Notre Dame for damages, alleging that the university owed her a duty to protect her from injury caused by other fans at the game.²⁰ The Indiana Court of Appeals ruled in favor of Bearman, stating that the university had knowledge that alcohol was consumed before and during University of Notre Dame football games.²¹ Because of the University of Notre Dame's knowledge of the pre-game and in-game drinking, it had reason to know that some people would get intoxicated and could possibly injure other fans at the game.²² The court held that the University of Notre Dame had a duty to take reasonable measures to protect its fans from injuries caused by other fans at its games.²³ Thus, even if a university does not directly sell alcohol in its stadium, a university can be held liable for injuries caused by intoxicated fans if it knows about the drinking culture surrounding its games and does not take proper precautions.²⁴

Injuries caused by intoxicated fans not only occur in college stadiums but professional ones as well. In *Verni*, Antonia Verni and the Vernis' young child were both badly injured when an intoxicated fan, Lanzaro, crossed the center line while driving and collided with the Vernis' car.²⁵ Lanzaro consumed several beers at the New York Giants game that afternoon, and vendors continually sold beers to him at the stadium, despite his obvious intoxicated state.²⁶ In deciding whether the New York Giants' beer vendors—outside contractors Harry M. Stevens, Inc. (HMS)—were negligent in serving beer to Lanzaro despite his intoxicated appearance, the New Jersey Superior Court applied New Jersey's dram shop act.²⁷ New Jersey's Licensed

18. *Bearman*, 453 N.E.2d at 1197.

19. *Id.*

20. *Id.*

21. *Id.* at 1198.

22. *Id.*

23. *Id.*

24. *See id.*

25. *Verni ex rel. Burstein v. Harry M. Stevens, Inc.*, 903 A.2d 475, 483–84 (N.J. Super. Ct. App. Div. 2006).

26. *Id.* at 484–86.

27. *Id.* at 490–91.

Alcoholic Beverage Server Fair Liability Act²⁸ stated that, for an alcohol server to be negligent, the server had to serve a “visibly intoxicated” person.²⁹ Ultimately, the appellate court reversed the trial court’s award to the Vernis for procedural reasons and never reached a decision on whether the servers (HMS), its parent corporation (Aramark Services), or the New York Giants were liable for Lanzaro’s actions.³⁰

Had the court reached a decision on the merits in *Verni*, it is speculated that the Giants and the NFL would have escaped liability.³¹ However, the beer vendor license holder—HMS—and its parent corporation would have been liable, as they were the ones who controlled the selling of alcohol.³² The license holder incurs the liability because a team’s agreement with a concessionaire usually indemnifies the team, and the concessionaire assumes the liability relating to its services.³³ After remand by the New Jersey appellate court, the case never went to trial again; HMS and Aramark Services settled the case for \$25 million.³⁴

As the preceding cases illustrate, a university and its contracted vendors (if the university contracts out its concession sales) could be held liable in the event an intoxicated fan injures another fan at a sporting event held at its stadium. In *Verni*, the court considered New Jersey’s dram shop statute before deciding to remand the case back to the state trial court.³⁵ Dram shop statutes define when a server of alcohol can be liable for injuries caused by the intoxicated person he served.³⁶ The next Part examines how some states, whose schools will serve as the basis for the case studies, address dram shop liability either by statute or common law.

III. THE BASIS FOR LIABILITY: STATE DRAM SHOP STATUTES AND COMMON LAW

Dram shop statutes and common law, in states lacking a dram shop statute,

28. N.J. STAT. ANN. § 2A:22A-5 (West 2010).

29. *Verni*, 903 A.2d at 491.

30. *Id.* at 507.

31. Gregory P. Diamantopoulos, Note, *A Look at Social Host and Dram Shop Liability from Pre-Game Tailgating to Post-Game Barhopping*, 4 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 201, 224 (2008).

32. *Id.*

33. See IAN S. BLACKSHAW, SPORTS MARKETING AGREEMENTS: LEGAL, FISCAL AND PRACTICAL ASPECTS 220 (2012).

34. Mark Mueller, *Paralyzed Girl and Mom Received \$25M Settlement from Beer Vendor*, STAR-LEDGER (Newark), Dec. 4, 2008, at 13.

35. *Verni*, 903 A.2d at 490–91.

36. *Id.* at 491.

determine the liability of a server who serves someone alcohol who then, after becoming intoxicated, injures themselves or a third person. Dram shop statutes and common law affect a school's decision to sell alcohol at its stadium because a school will not sell alcohol if it will have to pay more in damages to potential tort victims than it will gain in revenues from selling alcohol. Therefore, if the dram shop rule is more lenient to servers and only imposes liability in a few scenarios, the school will probably decide to sell alcohol due to the revenues it can gain from doing so.

Virtually every state has a dram shop statute.³⁷ In the handful of states that do not have dram shop liability statutes, courts determine the tort liability of servers by using negligence principles and other alcohol-related statutory regulations.³⁸ This Part will discuss the dram shop statutes, or lack thereof, of Wisconsin, Minnesota, and West Virginia. These three states not only differ in the amount of protection afforded to alcohol servers but also differ in the method in which that protection was created within the state. Wisconsin, Minnesota, and West Virginia, and the universities located therein, will serve as the case study comparison throughout the rest of this Comment.

A. Wisconsin

Wisconsin has one of the most server-protective dram shop statutes in the country.³⁹ Wisconsin's dram shop statute states that "[a] person is immune from civil liability arising out of the act of procuring alcohol beverages for or selling, dispensing or giving away alcohol beverages to another person."⁴⁰ Basically, in Wisconsin, a place of business that sells alcohol or provides it for free will most likely not be held liable for the tortious acts caused by an intoxicated person.⁴¹

However, there is a narrow exception where the provider can be held liable under the Wisconsin Statutes.⁴² The provider's immunity does not apply "if the provider knew or should have known that the underage person was under the legal drinking age and if the alcohol beverages provided to the

37. See generally LexisNexis 50 State Surveys, Legislation & Regulations, *Dram Shop Liability* (May 2011).

38. R. Scott Summers, Comment, *Judicially Imposed Liquor Liability and Developments in West Virginia Negligence Actions*, 93 W. VA. L. REV. 455, 456 (1991).

39. See Nina J. Emerson & Sarah B. Stroebel, *Another Look at Dram Shop Liability*, WIS. LAW., Aug. 2000, at 14, 16–18.

40. WIS. STAT. § 125.035(2) (2009–10).

41. See *id.*

42. *Id.* § 125.035(4)(b).

underage person were a substantial factor in causing injury to a 3rd party.”⁴³ Despite this carved-out exception for minors, the provider will still have immunity if all of the following elements are met: (1) the minor falsely represented her age, (2) the minor presented identification that she is of legal age, (3) the provider relied on the representation in good faith, and (4) an “ordinary and prudent person” would believe that she was of drinking age.⁴⁴ The sections regarding serving minors are important given that a majority of students attending college sporting events are underage.

B. Minnesota

Minnesota’s dram shop statute, on the other hand, provides a little less protection for providers of alcohol. The statute states that “[a] . . . person injured . . . or who incurs other pecuniary loss by an intoxicated person or by the intoxication of another person, has a right of action . . . for all damages sustained against a person who caused the intoxication of that person by illegally selling alcoholic beverages.”⁴⁵ Although not as forgiving as Wisconsin’s statute, the Minnesota dram shop statute will shield the provider from liability unless the provider is illegally selling the alcoholic beverages.⁴⁶

In addition, Minnesota’s dram shop statute contains a notice requirement, requiring the person who is trying to collect from a provider to give notice to the licensee or municipality of that provider.⁴⁷ This notice provision requires the person who claims damages to state: (1) the time and date when the alcohol was served and to whom; (2) the name and address of the persons claiming injury or damage; and (3) the time, date, and place of the injury or damage.⁴⁸

But like Wisconsin, Minnesota does provide an exception regarding providers who serve alcohol to minors.⁴⁹ Minnesota’s dram shop statute does not protect a provider who “knowingly provides or furnishes” alcohol to a minor.⁵⁰

43. *Id.*

44. *Id.*

45. MINN. STAT. § 340A.801(1) (2012).

46. *See id.*

47. *Id.* § 340A.802(1).

48. *Id.*

49. *Id.* § 340A.801(6).

50. *Id.*

C. West Virginia

West Virginia is one of the few states that does not have a dram shop statute that specifically addresses the liability imposed on providers of alcohol.⁵¹ The most relevant West Virginia statute provides criminal penalty for those who serve or give beer to persons underage or “visibly intoxicated.”⁵² Section 60-3A-25(a) of the West Virginia Code makes no mention of potential tort liability or causes of action available to those who are harmed by another intoxicated person. Instead, West Virginia courts recognize tort liability against servers using common law negligence principles in combination with its alcoholic beverage criminal statutes, which include section 60-3A-25(a).⁵³

The landmark case in which the highest West Virginia court recognized tort liability against a server was *Bailey v. Black*.⁵⁴ In *Bailey*, a victim was killed in an automobile accident when a drunk driver crossed the center line and collided with the victim’s car.⁵⁵ The drunk driver had been drinking throughout the night at a local bar, the Stoney Brook Inn, which was owned by the defendants.⁵⁶ The deceased’s widow brought a wrongful death suit against both the drunk driver and the bar owner, in which the trial court entered summary judgment in favor of the defendants.⁵⁷

On appeal, the court ruled in favor of the plaintiff, finding that a tort cause of action existed against the servers.⁵⁸ In reaching its conclusion that a cause of action existed, the court used a combination of the then-more-applicable statute, the 1986 version of section 60-7-12(a)(4),⁵⁹ which criminalizes the service of alcohol to “physically incapacitated” persons, along with section 55-7-9, which provides that a person injured by violation of a statute can recover damages.⁶⁰ The court reasoned that serving the intoxicated patron violated the criminal statute, and therefore, the plaintiff could sue for civil

51. Summers, *supra* note 38, at 456.

52. W. VA. CODE ANN. § 60-3A-25(a)(2)–(3) (LexisNexis 2010).

53. Summers, *supra* note 38, at 456–57.

54. 394 S.E.2d 58 (W. Va. 1990).

55. *Id.* at 59.

56. *Id.*

57. *Id.*

58. *Id.* at 61.

59. *See id.* at 59. The main difference between the 1986 version and the current version is that the 1986 statute uses the language “alcoholic liquors,” while the current version now contains the substituted language “nonintoxicating beer, wine or alcoholic liquors.” *See* W. VA. CODE ANN. § 60-7-12(a)(4) (LexisNexis 2010).

60. *Bailey*, 394 S.E.2d at 60.

damages using section 55-7-9.⁶¹ The *Bailey* court also explained that, for the server to be in violation of the criminal statute against serving “physically incapacitated” persons, the server had to observe signs of the patron’s drunkenness or should have reasonably known, based on the number of drinks, that the patron was drunk.⁶² Finally, the court noted that the civil liability statute allowed third parties, such as the widow in this case, to recover from the server because the language read that “[a]ny person . . . may recover”⁶³

Using similar reasoning and the statute criminalizing the sale of alcohol to minors, the Supreme Court of Appeals of West Virginia held that serving to minors could result in tort liability against the server.⁶⁴ However, like the dram shop statutes of Wisconsin and Minnesota, the court noted that it would not impose liability on a server if the server reasonably believed that the patron was of age and provided identification verifying his or her age.⁶⁵ In the court’s words, the reasonable belief of age “rebut[s] the *prima facie* showing of negligence” and serves as a shield against liability.⁶⁶

IV. NCAA AND CONFERENCE RULES GOVERNING THE SALE OF ALCOHOL AT STADIUMS

Dram shop statutes are not the only source of regulations that a university considers in determining whether it will sell alcohol at its stadium. Because all universities participating in big-time collegiate athletics are members of the NCAA, they are subject to NCAA rules. The *NCAA Division I Manual* is a 400-plus page document governing everything in collegiate athletics from student-athlete eligibility standards to academics to conduct.⁶⁷ Accordingly, the NCAA maintains rules and policies governing alcohol sales and advertising at its events. Not only does the NCAA severely limit alcohol advertising and completely prohibit alcohol companies from sponsoring its championship events,⁶⁸ the NCAA also prohibits alcoholic beverages from being sold at or brought into its championship events.⁶⁹

61. *Id.*

62. *Id.*

63. *Id.* (citing W. VA. CODE ANN. § 55-7-9 (LexisNexis 1923)) (internal quotation marks omitted).

64. See *Anderson v. Moulder*, 394 S.E.2d 61, 68 (W. Va. 1990).

65. *Id.*

66. *Id.*

67. See generally 2012–13 NCAA DIVISION I MANUAL.

68. *Id.* § 31.1.14.1.

69. *Id.* § 31.1.15.

However, the NCAA chooses not to ban alcohol sales during regular season competition, instead leaving the decision to sell up to the conferences and schools.⁷⁰ Some conferences, like the Southeastern Conference, have rules prohibiting the sale of alcohol in general seating areas.⁷¹ Other conferences, such as the Big 12, do not.⁷² If the conference does not regulate the public sale of alcohol at its members' stadiums, the universities are left to make their own decisions.⁷³ But just because a university is allowed to sell alcohol under the NCAA or conference rules does not necessarily mean that it will choose to do so.

V. UNIVERSITY CASE STUDIES

The University of Wisconsin, the University of Minnesota, and West Virginia University provide good examples for comparison because the states in which each are located have differing dram shop statutes, and the schools have differing opinions regarding alcohol sales at their campus venues. Analyzing each school's decision regarding the sale of alcohol in its general seating areas in the context of the dram shop statutes, or common law in West Virginia's case, provides considerable insight into what factors universities consider in making their decisions to sell alcohol.

A. *University of Wisconsin*

The University of Wisconsin expressly prohibits alcohol in the general seating of its football stadium, Camp Randall Stadium, but the university does allow alcohol to be provided to those fans in club seats and suites.⁷⁴ Although not mentioned on the university's athletic website, the other sporting venues owned by the University of Wisconsin generally prohibit alcoholic beverages.⁷⁵

The University of Wisconsin's ban on alcohol sales is not limited to sporting venues. The prohibition of alcohol in other campus-owned buildings

70. See Peterson, *supra* note 7; Don Muret, *Colleges Weigh Risks, Rewards of Stadium Beer Sales*, SPORTS BUS. J. (Sept. 19, 2011), <http://www.sportsbusinessdaily.com/Journal/Issues/2011/09/19/Colleges/Beer.aspx>.

71. Muret, *supra* note 70.

72. Briggs, *supra* note 7.

73. See Muret, *supra* note 70.

74. *Badger Gameday FAQ*, UWBADGERS.COM, <http://www.uwbadgers.com/gameday/gameday-faq.html> (last visited Nov. 20, 2012).

75. See *Concessions Menu/Products*, NAT'L W CLUB, <http://www.nationalwclub.com/interior.cfm?sect=con&id=menu> (last visited Nov. 20, 2012).

can be found in the *University of Wisconsin-Madison Facilities Use Policy*.⁷⁶ The relevant section reads, “Unless expressly permitted under Regulations B, C, or D, use or consumption of alcohol beverages and possession of an open container which contains an alcohol beverage are prohibited on all University lands and in all University-owned or leased buildings.”⁷⁷ One of the important exceptions under Regulations B, C, and D is that the university permits alcoholic beverages in university-owned parking areas at home football games if someone in the group has purchased a parking permit to use that lot.⁷⁸ Although one can consume alcohol in parking lots before football games, the sale of alcohol on university lands is prohibited unless the facility has been given an exception.⁷⁹ None of the University of Wisconsin’s sporting venues, including Camp Randall Stadium, have been listed as an exception.⁸⁰

Consistent with its reluctance to sell alcohol in its campus venues, the university prohibits the athletic department from selling advertising space to alcohol distributors.⁸¹ The university’s decision to prohibit alcohol at its venues does not come without a cost; the school could make an extra \$1 million annually by selling alcohol at its sporting events.⁸² Despite the prospects of more money, athletic director Barry Alvarez has stated that selling alcohol at Camp Randall is something he will not even consider.⁸³

B. University of Minnesota

The University of Minnesota’s decision regarding alcohol sales at its campus stadiums following the opening of a new football stadium has been more of a winding road. Before the University of Minnesota built its own campus stadium, the university football team played its games in the Hubert H. Humphrey Metrodome, which was also home to the Minnesota Vikings and Minnesota Twins at the time.⁸⁴ At the Metrodome, all fans of legal age could

76. See generally UNIV. OF WIS.-MADISON, FACILITIES USE POLICY P-7.1 (2003), available at http://www.vc.wisc.edu/VCA%20Facilities%20Use%20Policies%20and%20Guidelines/UWMadison-Facility-Info/Facility-Policies/Event_Services_UW_Policies_P-7-1.pdf.

77. *Id.* at 1.

78. *Id.* at 2.

79. *Id.* at 2–3.

80. See *id.*

81. Andy Baggot, *It’s Not a Barrel of Fun: While West Virginia Mulls Beer Sales, Barry Alvarez Says It Won’t Happen Here*, WIS. ST. J. (Madison), May 29, 2011, at D1.

82. *Id.*

83. *Id.*

84. *Herbert H. Humphrey Metrodome*, GOPHER SPORTS, <http://www.gophersports.com/facilities/metrodome.html> (last visited Nov. 21, 2012).

buy alcohol, and the university had little say in the matter because the Metropolitan Sports Facilities Commission, not the University of Minnesota, operated the Metrodome.⁸⁵

When the University of Minnesota finally opened its own on-campus stadium in the fall of 2009, the university wanted to sell alcohol in the stadium's suites and other premium seating only.⁸⁶ In response to a disgruntled Minnesota state legislature, the University of Minnesota's Board of Regents voted to prohibit alcohol sales at all campus athletic events.⁸⁷ The Minnesota legislature passed a state law requiring the university to decide between making alcohol available to all fans for purchase or making it available to no one, so the board decided to vote against selling alcohol.⁸⁸ Before the state law was passed, the university was able to provide alcohol in suites at Mariucci Arena (hockey) and Williams Arena (basketball).⁸⁹ As a result of the board's decision and the new state law, the university suffered economic consequences as it was forced to cut suite and club seat prices by ten percent to encourage suite and club seat holders not to cancel their tickets in response to the ban on alcohol.⁹⁰ The University of Minnesota ended up losing at least two suite holders and a number of indoor club seats at the new TCF Bank Stadium before it even opened.⁹¹

In 2010, after one season of alcohol-free campus stadiums, the Minnesota legislature had a change of heart and attempted to compromise with the university by passing new legislation.⁹² The new law allowed the university to sell alcohol in its premium seats (suite and club) if the university also made alcohol available for sale in one-third of the general seating areas.⁹³ However, the university did not want to make alcohol available in any of the general seating areas, so it did not apply for a liquor license.⁹⁴ As a result, the

85. *See id.*

86. Alex Ebert, *No Booze for U of M Sports Fans*, STAR TRIB. (Minneapolis-St. Paul), June 25, 2009, at 1A.

87. *Id.*

88. *Id.*

89. *Id.*

90. *Minnesota Senate Revisits Alcohol Ban at TCF Bank Stadium*, SPORTS BUS. DAILY (Mar. 24, 2010), <http://www.sportsbusinessdaily.com/Daily/Issues/2010/03/Issue-133/Facilities-Venues/Minnesota-Senate-Revisits-Alcohol-Ban-At-TCF-Bank-Stadium.aspx?hl=3M&sc=0>.

91. Chip Scoggins, *The Budget: Stadium Will Lift U Revenue, but Booze Ban Cuts the Gain*, STAR TRIB. (Minneapolis-St. Paul), Sept. 6, 2009, at 20S.

92. *No Alcohol at TCF Bank Stadium*, MYFOX9.COM (June 7, 2010), <http://www.myfoxtwincities.com/story/17640236/no-alcohol-at-tcf-bank-stadium>.

93. MINN. STAT. § 340A.404(4a)(a)(3) (2011).

94. Press Release, Univ. of Minn., University of Minnesota Does Not Plan to Revisit Stadium Alcohol Policy, President & Board. of Regents Chair Say (June 7, 2010), *available at*

University of Minnesota chose not to sell alcohol at all, joining three other Big Ten universities in going completely “dry” at its stadiums.⁹⁵

However, things changed once again in April 2012, and the University of Minnesota got its compromise with the Minnesota state legislature.⁹⁶ Discussions regarding a change to the alcohol sales law started as a result of ongoing negotiations between the University of Minnesota and the Minnesota Vikings; the Vikings need a place to play temporarily when their new stadium is built on the current site of the Metrodome.⁹⁷ After many proposed amendments and discussions, the state legislature included changes to the statutory requirements imposed on the University of Minnesota if it wished to sell alcohol.⁹⁸ The new law states that the University of Minnesota can sell alcohol in its general seating areas at TCF Bank Stadium and other on-campus venues as long as the university obtains a liquor license and meets the new requirements of paragraph (b).⁹⁹ Paragraph (b) requires that the University of Minnesota’s Board of Regents hold a license that provides for alcohol sales at the stadium at a location “convenient to the general public” and allows for sales at that location through halftime.¹⁰⁰ After meeting the requirements, the statute provides a lot of discretion to the Board of Regents in how they want to implement alcohol sales.¹⁰¹

Consistent with their desire to sell mainly to those with premium seating and their reluctance to sell in general seating areas, the Board of Regents created a plan to suit their needs. First, the plan calls for the sale of only beer and wine, which will begin one hour prior to kickoff and conclude at the end of halftime.¹⁰² Secondly, alcohol will only be sold at one point of sale on the

http://www1.umn.edu/news/news-releases/2010/UR_CONTENT_200850.html.

95. Jenna Ross, *U Moves to Ban Booze in Arenas*, STAR TRIB. (Minneapolis-St. Paul), June 12, 2009, at 1A. The other two Big Ten schools that are completely “dry” are The Ohio State University and the University of Michigan. *Id.* The recently-added University of Nebraska-Lincoln is the fourth “dry” school. See Press Release, Univ. of Neb.-Lincoln, Memorial Stadium Access, Policies Largely Unchanged from Last Year (Aug. 24, 2012), available at <http://newsroom.unl.edu/releases/2012/08/24/Memorial+Stadium+access,+policies+largely+unchanged+from+last+year>.

96. Rachel E. Stassen-Berger, *Dry Spell to End at TCF Stadium*, STAR TRIB. (Minneapolis-St. Paul), Apr. 24, 2012, at 1A.

97. Mike Kaszuba, *U Likely to Allow Alcohol for Vikes*, STAR TRIB. (Minneapolis-St. Paul), Jan. 28, 2012, at 1A.

98. See Stassen-Berger, *supra* note 96.

99. MINN. STAT. § 340A.404(4a)(a)(3) (2012).

100. *Id.* § 340A.404(4a)(b).

101. See Stassen-Berger, *supra* note 96; Jenna Ross, *Beer, Maybe Wine, Foreseen at TCF*, STAR TRIB. (Minneapolis-St. Paul), July 10, 2012, at 1B.

102. *Board of Regents Approves Plans for Alcohol Sales*, GOPHER SPORTS (July 11, 2012), <http://www.gophersports.com/sports/m-footbl/spec-rel/071112aaa.html>.

west end of the general seating area at the stadium, and customers will only be able to purchase two beers at a time.¹⁰³ Thirdly, customers who appear to be younger than thirty years of age will be required to show identification, and the university's current vendor, Aramark, will handle the sales.¹⁰⁴ Finally, the university will monitor the plan throughout the first two years to ensure that fans are safe and consuming alcohol responsibly.¹⁰⁵

C. West Virginia University

West Virginia University is another one of the schools to recently decide to sell alcohol in the general seating area at its football stadium, Milan Puskar Stadium, beginning in the 2011 football season.¹⁰⁶ Although the increased annual revenues in the expected range of \$500,000 to \$1.2 million seem like the driving force behind the change in policy, West Virginia athletic director Oliver Luck said the change would combat the binge drinking issues during halftime.¹⁰⁷ West Virginia previously allowed fans to leave the stadium at halftime and gain readmittance by showing their ticket stub.¹⁰⁸ Oftentimes, fans would leave the stadium as halftime approached, go back to their tailgate areas, binge drink, and re-enter the stadium shortly after halftime concluded.¹⁰⁹ Luck believes that selling beer inside of the stadium will allow the university to have some control over the alcohol consumption, leading to fewer instances of out-of-control fan behavior.¹¹⁰

West Virginia University's alcohol policy also includes strict identification checks, a limit of two beers per purchase,¹¹¹ no sales after the midpoint of the third quarter, and no points of sale in the vicinity of the student section.¹¹² One final and important aspect of the policy is that the company that handles concessions at the football stadium, Sodexo, holds the beer license instead of West Virginia University.¹¹³

103. *Id.*

104. *U of M Announces Alcohol Sales Policies at TCF Bank Stadium*, GOPHER SPORTS, <http://www.gophersports.com/sports/m-footbl/spec-rel/090612aab.html> (last visited Nov. 21, 2012).

105. *Board of Regents Approves Plans for Alcohol Sales*, *supra* note 102.

106. Press Release, W. Va. Univ., WVU Board Passes Alcohol Policy Allowing for Controlled Beer Sales at Stadium (June 3, 2011), *available at* <http://wvutoday.wvu.edu/n/2011/06/03/wvu-board-passes-alcohol-policy-allowing-for-controlled-beer-sales-at-stadium>.

107. Muret, *supra* note 70.

108. *Id.*

109. *Id.*

110. *See id.*

111. *Id.*

112. Press Release, W. Va. Univ., *supra* note 106.

113. Muret, *supra* note 70.

Financially, West Virginia University did very well after its 2011 home game against the then-number one ranked Louisiana State University (LSU) Tigers. The school took in \$255,396 in alcohol sales alone.¹¹⁴ However, the game also left a black mark on the school when four LSU fans were attacked in the parking lot following the game.¹¹⁵ The fans indicated that they were not wearing LSU clothing, which would have made them a target, so there is reason to believe that alcohol played a role in the incident.¹¹⁶

VI. LEGAL CHALLENGES AND POLICY CONSIDERATIONS FACING UNIVERSITIES IF THEY DECIDE TO SELL ALCOHOL

As discussed in the previous Part, revenue generation is not the only driving force behind a university's decision to sell alcohol at its stadiums. The decision to sell also must account for server liability concerns, conflicting university policies, and overall perception and image issues. If the University of Wisconsin decided it wanted to begin selling alcohol at its campus stadiums, the university would have to consider the legal implications of doing so and the possible conflicting policies at the university level that would need to be changed. For the University of Minnesota and West Virginia University, which already sell alcohol at their football stadiums, the decision has already been made, so it is beneficial to consider potential legal issues the universities might face in the near future if a fan gets injured. The following is a discussion that considers the dram shop statutes or common law of each state and the respective university policies.

A. *University of Wisconsin*

Wisconsin's dram shop liability statute is very forgiving to providers of alcohol: a provider is immune from civil liability actions that arise out of "selling, dispensing or giving away alcohol beverages"¹¹⁷ The only exception to immunity is if the provider knowingly provided an underage person with the alcohol, and the alcohol was a substantial factor in causing the injury to the third party.¹¹⁸ Under the university's current policy of selling alcohol only to fans in suites and club seats, the university faces almost no risk

114. Briggs, *supra* note 7.

115. Ben Kercheval, *LSU Fan Said Football Game Was Not Reason for Attack*, NBC SPORTS (Sept. 28, 2011), <http://collegefootbaltalk.nbcsports.com/2011/09/28/lsu-fan-said-football-game-was-not-reason-for-attack/>.

116. *Id.*

117. WIS. STAT. § 125.035(2) (2009–10).

118. *Id.* § 125.035(4)(b).

of potential tort liability under the dram shop statute if an intoxicated fan injures a third party at a game. The risk is minimal because the number of underage persons, most likely students, in the premium seating is at a minimum.

If the University of Wisconsin decided to sell alcohol in the general seating areas of its campus stadiums as well, the main concern would be underage students buying alcohol. Under Wisconsin's dram shop statute, the university could possibly be liable if the university or its employees sold alcohol to underage students, if it knew the students were underage, and if the alcohol was a substantial factor causing the third party injury.¹¹⁹ However, *Verni* suggests that if a concession company handled the concessions for the team (or school in this instance), the company would be held liable, but not the university, because the concession company would be using its own employees as servers.¹²⁰

The university's current concession company is the National W Club,¹²¹ which is a booster club composed mostly of past University of Wisconsin athletes. An interesting inquiry would be whether the volunteers that the National W Club employs to run the concession stands at University of Wisconsin athletic events would be considered university employees because of the club's close connection with the athletic department. If National W Club volunteers are considered employees of the athletic department or university, both the volunteers and university could be liable under the Wisconsin dram shop statute if a minor was knowingly served. If the volunteers are not considered employees, there would be almost no basis to hold the university liable if it were to sell alcohol in general seating areas.

In addition to accepting risk of potential liability, the athletic department would also have to convince the university to change the *University of Wisconsin-Madison Facilities Use Policy* to allow for the sale of alcohol on university lands and buildings. Or, if that does not work, the athletic department could lobby for an exception similar to the provision allowing for alcohol in the parking lots on football game days. Despite the low risk of tort liability for injuries to third parties caused by intoxicated fans at games, the University of Wisconsin seems steadfast in its preference to avoid selling alcohol at its campus stadiums as evidenced by athletic director Barry Alvarez's comments that he would not even consider selling alcohol at Camp

119. *Id.*

120. See *Verni ex rel. Burstein v. Harry M. Stevens, Inc.*, 903 A.2d 475, 497–98 (N.J. Super. Ct. App. Div. 2006).

121. *Concessions*, NATIONAL W CLUB, <http://www.nationalwclub.com/interior.cfm?sect=con&id=main> (last visited Nov. 21, 2012).

Randall Stadium in the near future.¹²²

B. University of Minnesota

The University of Minnesota will encounter slightly different issues than the University of Wisconsin as the University of Minnesota starts selling alcohol at its stadiums. Minnesota's dram shop statute bestows immunity to providers as long as the sale of alcohol is not illegal.¹²³ The first step the university must take to ensure the legality of its sales is obtaining a license from the State of Minnesota that meets the statutory requirements of section 340A.404(4a)(b).¹²⁴ Fortunately, the University of Minnesota already met the requirements of a license with the approval of its plan to sell alcohol in one area of the stadium through halftime.¹²⁵ Simply by obtaining a license, the University of Minnesota absolved itself of virtually all liability that might stem from its sale of alcohol at TCF Bank Stadium and other campus stadiums.

However, somewhat similar to Wisconsin, Minnesota's dram shop statute does not provide immunity to those providers who "knowingly provide[] or furnish[]" alcohol to minors.¹²⁶ If the university sells alcohol to minors at its stadiums and those minors (most likely to be students) later injure another person while intoxicated, the university could be held liable.¹²⁷ The University of Minnesota will likely avoid this scenario where it could be held liable because its plan provides that customers who appear under the age of thirty must show identification to buy alcohol.¹²⁸ Of course, minors could try and purchase alcohol using fake identifications, but for the university to be held liable under Minnesota's dram shop statute, there has to be knowledge of age.¹²⁹ Allowing a few minors with fake identifications to slip through the cracks would not seem to meet that standard. Because the University of Minnesota has a license that complies with state law and has a policy to check identifications, there is little chance that it could be held liable for selling alcohol to minors who later injure third parties.

The probability of successfully holding the University of Minnesota liable goes down even further considering that the university contracted with a

122. Baggot, *supra* note 81.

123. MINN. STAT. § 340A.801(1) (2012).

124. *Id.* § 340A.404(4a)(a)(3).

125. *Board of Regents Approves Plans for Alcohol Sales*, *supra* note 102.

126. § 340A.801(6).

127. *See id.*

128. *U of M Announces Alcohol Sales Policies at TCF Bank Stadium*, *supra* note 104.

129. § 340A.801(6).

concessionaire to handle the alcohol sales.¹³⁰ The University of Minnesota will not be handling the sale of alcohol; rather, the university's current concessionaire, Aramark, will do so.¹³¹ Most concessionaire agreements provide that the team, or university in this case, will not be held liable for claims that arise from the sale of concessions.¹³² Instead, the concessionaire assumes the risk of liability.¹³³ If Aramark agreed to indemnify the University of Minnesota in its concession agreement, there are virtually no instances where the university could be held liable for its alcohol sales. Because of its compliance with state law and agreement with Aramark, a third party injured by a person who consumed alcohol at a University of Minnesota football game is unlikely to be successful in trying to sue the university for damages.

Despite an initial reluctance to sell alcohol at its stadiums, the University of Minnesota serves as an example of how quickly things can change at both the state level and the university level.

C. West Virginia University

Unlike the University of Wisconsin, and the University of Minnesota initially, West Virginia University has already instituted beer sales at its campus stadiums. In light of that decision, West Virginia University now has to consider the potential tort liability the university might face under West Virginia's common law if someone is injured. West Virginia Code sections 60-3A-25(a)(2) and (3) make it a criminal offense to sell alcohol to a minor or to sell to a "visibly intoxicated" individual.¹³⁴

However, West Virginia University has assured itself of avoiding almost any threats of tort liability because its beer license is held by a concession company, Sodexo. West Virginia athletic director Oliver Luck commented that Sodexo, not the university, would hold the liability risk, which is similar to the professional teams that outsource their concessions to outside companies.¹³⁵ Because Sodexo and its employees are handling the alcohol sales at the stadium, the university will not have an opportunity to violate any of the criminal statutes, and therefore, cannot be held civilly liable via section 55-7-9.¹³⁶

130. See BLACKSHAW, *supra* note 33, at 220.

131. *U of M Announces Alcohol Sales Policies at TC Bank Stadium*, *supra* note 104.

132. BLACKSHAW, *supra* note 33, at 220.

133. See *id.*

134. W. VA. CODE ANN. § 60-3A-25(a)(2)–(3) (LexisNexis 2010).

135. Muret, *supra* note 70.

136. See W. VA. CODE ANN. § 55-7-9 (LexisNexis 2008).

Although the university is unlikely to be held civilly liable if something happens to a fan, West Virginia University's Board of Governors passed the alcohol sales policy largely because it was meant to curb unruly fan behavior.¹³⁷ An annual report is to be completed assessing the policy,¹³⁸ so if fan safety and behavior are not improved, the Board of Governors may pull the policy altogether.

VII. FUTURE ISSUES

With the increasing number of schools turning to alcohol sales to boost athletic department revenues, several issues face the NCAA. Seeing the additional revenues that schools are generating from alcohol sales, the NCAA might consider a change to its prohibitions of alcohol sales and advertising at its championship events. Additional revenues from alcohol sales could allow the NCAA to pass its proposed \$2000 stipend¹³⁹ to student-athletes in that it could pass the revenues directly to the schools to help pay for it. The increased revenues available to the schools that sell alcohol also put them at a competitive advantage over schools that choose not to sell alcohol. The schools might use the additional revenue to build facilities and further enhance their programs to entice the best student-athletes to attend. There is already concern over a perceived "arms race" in collegiate athletics, and additional revenue streams for schools seem to add to the problem.

Another issue to consider is what states should do in regard to ensuring that potential tort victims have adequate remedies available to them. Dram shop statutes and common law provide little protection to potential tort victims. Even if victims do have a cause of action, it seems that the professional teams and universities have deeper pockets than a concession company would. As more universities choose to sell alcohol at their stadiums, the dram shop laws should be changed to provide tort victims more protection; otherwise more and more tort victims will be saddled with injuries and have nowhere to go to collect adequate damages.¹⁴⁰

Currently, the law does not provide much legal protection for those injured by intoxicated fans. But with an increase in the number of universities selling

137. Press Release, W. Va. Univ., *supra* note 106.

138. *Id.*

139. See Steve Yanda, *NCAA Wrestles with Implications of Stipends for Student-Athletes*, WASH. POST, Feb. 22, 2012, at D6.

140. Underlying this conclusion is the assumption that as more schools start selling alcohol at their stadiums, with most of those schools contracting out concession sales to concession companies, concession company resources will be stretched and they will be less able to pay out large damage awards.

alcohol in campus stadiums on the rise, change may be on the horizon. An increase in the sale of alcohol in campus stadiums may lead to a call to lessen dram shop protections and provide more protection for injured victims. However, lesser protections may have the effect of schools being less willing to sell alcohol because of the increased liability costs.

VIII. CONCLUSION

Selling alcohol at campus stadiums can provide a substantial boost in revenue for athletic departments across the country, and some schools like the University of Minnesota and West Virginia University are taking advantage of it. On the other hand, schools like the University of Wisconsin choose not to sell alcohol in their general seating areas.

Today, neither dram shop laws nor NCAA regulations offer much resistance to schools choosing to sell alcohol; rather, concerns about underage drinking and public image seem to drive the schools' decision more than anything. Nevertheless, more and more schools are deciding to sell alcohol at their campus stadiums as state funding dries up for public universities. In fact, the number of FBS schools that have decided to sell beer in general seating areas has doubled in the past ten years.¹⁴¹ Schools are starting to change their attitudes regarding alcohol sales due to potential revenues and diminished state funding. Therefore, state legislatures and the NCAA need to consider possible changes to their rules to account for more future potential tort victims in college stadiums across the country.

141. Peterson, *supra* note 7.